SUMMARY

„The Methods of Linguistic Interpretation of the European Law"

According to its title, the doctoral thesis deals with the process of the interpretation of the European law, more exactly with the methods using the linguistic form of this normative complex which presents as many legal as linguistic specificities. In my opinion, these specificities and among them especially the *multilingualism of the EC law* and the *semantic autonomy* of its terminology must have some reflects on the interpretation of the law as well.

The global objective of this study is to discover these specificities of the European law interpetation by analyzing the intepretative activities of its privileged interpreter: The Court of Justice of the European Communities (the „Court"). This global aim becomes more specific with regard to the observation of the role which is played in this process by the linguistic method of interpretation understood in *largo sensu*. Since the mere method is theoretically well known, I focused my attention more on study of the interprete´s decision-making process within the cases where the controversy was caused by a linguistic ambiguity or discrepancy on one hand and by the need of an autonomous European interpretation of the disputed term or provision on the other hand. When dealing with the problematic of comprehension of the textual form of the EC law rules, I could not miss the opportunity to make a reflexion concerning the EC law terminology and its analysis is the secondary aim of this work.

The thesis can be divided, from the methodological point of view, into three main parts: theoretical, practical and analytical. Firstly, I deal with the theoretical side of the problematic in question, in all national, international and European levels. After, I study some cases selected on the basis of their linguistic content using the original

methodology in practical part. Finally, I present a synthetic analysis of the partial results gained in the previous part.

In introduction, after having presented the aims as well as the methodology, I thank different inspirators of this paper and I mention the mode of working with the foreign sources which I am trying to make accessible for the Czech public in their totality if possible. The theoretical part, which follows the introduction, is divided in two chapters. The first chapter presents general theories of legal interpretation, while the second chapter treats directly the interpretation of the European law. The main lines of interpretation as they were enounced from the period of the „Founding father" of legal interpretation - Friedrich Carl von Savigny in 19th century to the the modern interpretations as they were developed by the Czech well known law theoreticians Viktor Knapp, Oto Weinberger and others, the different aspects of interpretation are progressively examined.

In the beginning there is a description of legal language whose specificities in comparison with the general language have an impact on legal interpretation. It is followed by a short analysis of the objectives, importance and extent of interpretation and finally until by a presentation of selected classical interpretative methods. Linguistic, logical, systematic, teleological, historical and comparative methods are described shortly but concisely. In the end, I present also the methods of interpretation used in Public international law which permits, with regard to the proximity of both normative systems, to make a passage into the theory of interpretation of the European law. The interpretation of its basis in the form of founding treaties can be generaly made in accordance with the general rules of interpretation provided in article 31 and others of the Vienna Convention on international treaty law, also as some customary principles of interpretation like the principle of *effet utile* could be normally applied for interpretation of the law issued from the sovereign will of the independent member States.

Although, this is not the case and some striking discrepancies between the two legal systems appear. In the domaine of interpretation, the phenomenon of differenciation is closely related to the activity of the Court. In conformity with the general procuration obtained by the exceptionally successful formulation of the article 220 of the Treaty establishing the European Community that gives him the mission of the monopolistic interpretation of the law made by it, this organ did not cease to put forward, from the beginnings of the European continent integration, the limits of the autonomy of EC law. Therefore, I study the institution from different points of view, beginning with its institutional side and ending with the analyses of its interpretative activities *stricto sensu*. Therefore, it is its composition and its prerogatives, the procedures and the sources used by it, also as its linguistic regime which differs from general linguistic regime practised in the European institutions, which are described primarily as the main elements having their impact on development of a particular style of interpretation of the EC law.

The core of the theoretical part of the thesis consists of the analysis of this particular style of interpretation based in large measure on the abandonment of the classical methods of interpretation on behalf of the methods perceived in domestic laws. Relying on the conclusions of the recognized experts as the authors-judges on the Court Kutscher or Pescatore, as well as on the analysis of practise of the Court, judgement Cilfit in the first place, I try to demonstrate this observed specificity which appears just in the loss of importance of the linguistic method of interpretation. This method used necessarily as the starting point for the comprehension of all legal rules gives up nevertheless more and more space for the other approaches. This is especially the aim in view by European rule which is underlined in Court's decisions and nobody contests yet the principal importance of the teleological method. Even withinside of linguistic method itself, we can observe a certain negligence of the semantic values of terms

which seem to be clear in different linguistic versions taken apart but are often diverging in mutual confrontation.

In the two chapters of the practical part, the cases containing linguistic discrepancies or autonomous definitions of EC law terms are studied. The cases extracted from electronic publication „Répertoire de la jurisprudence de la Cour de Justice", which is available in totality only in French on the web site of the last mentioned institution, are studied in their original version. I try to describe them while using of my own methodology elaborated in order to find out the principles of the resolution of linguistically complex cases. This methodology is based on the evaluation of the Court's decision as one of the three following interpretative approaches: *selective, pluralistic* or *creative*. The first approach represents a choice between different diverging linguistic versions and it can have two forms following the number of predominant versions: majority or minority selective approach. The second one includes various manners used by the Court in effort not to give priority to any of concurrent linguistic versions by reasoning more or less passing away from simple semantic sense. Finally, the third approach is based on a constructive interpretation by which interpret contributes barely for creation of the European law by a fabrication of an autonomous European definition of the term or provision in question.

The analytical part gathers the results gained in the previous part into two schemes in order to be practical and clear. Their analysis shows that all three approaches occur in cases containing linguistic discrepancy and that the *pluralistic* and *creative* approaches are presented in cases demanding an autonomous interpretation. It means that the interpretative activity of the Court seems to be profitable as a completion of the European law by the specification of the sense of its vocabulary, nevertheless the presence of *selective* solutions shows evidence that the principle of equality of the authentic languages used normally in European Community are not always respected by the

Court. From linguistic point of view, I propose a maximalist vision of the European terminology which can be identified in my conception with the totality of the terms used once in texts of *acquis communautaire*. I am defending this opinion that may seem to be shocking for certain linguists, by seeing this problematic from the juridical point of view. As a jurist, I am interested in *potential* of any word to become a legal term with an autonomous European sense specified by the Court, more than in its other linguistic qualities.

In conclusion, I emphasize the importance of an original and innovative approach to the preparation of a scientific paper, including the thesis. In this sense, I consider the objectives of this work fulfilled, with regard to the confirmation of hypothesis concerning the constructive activity of the Court within the interpretation of the European law on one hand and with regard to the elaboration of this controversial analysis of the European terminology on the other hand.